

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAYTON LIVELY,

1:05-cv-00362-LJO-DLB-P

Plaintiff,

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS** (Doc. 32)

vs.

**ORDER GRANTING MOTION TO
DISMISS** (Doc. 26)

J. WOODFORD, et al.,

Defendants.

ORDER DISMISSING ACTION

Plaintiff, Dayton Lively ("plaintiff"), a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On December 19, 2007, the Magistrate Judge filed Findings and Recommendations herein which were served on the parties and which contained notice to the parties that any objections to the Findings and Recommendations were to be filed within thirty (30) days. To date, the parties have not filed objections to the Magistrate Judge's Findings and Recommendations.

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1 In accordance with the provisions of 28 U.S.C.
2 § 636(b)(1)(C) and Local Rule 73-305, this Court has conducted a
3 de novo review of this case. Having carefully reviewed the
4 entire file, the Court finds the Findings and Recommendations to
5 be supported by the record and by proper analysis.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. The Findings and Recommendations, filed December 19,
8 2007, are ADOPTED IN FULL;

9 2. Defendants' unenumerated Rule 12(b) motions, filed July
10 9, 2007 and July 26, 2007, are GRANTED; and,

11 3. This action is DISMISSED, without prejudice, based on
12 plaintiff's failure to exhaust.

13 IT IS SO ORDERED.

14 **Dated: February 13, 2008**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE